SUPREME COURT OF THE UNITED STATES.

No. ~~283~~. 124.

WILLIAM GLASGOW, JR., AND WILLIAM C. TAYLOR, SURVIVING COMMISSIONERS OF THE 16TH SECTION IN TOWNSHIP 45 NORTH, OF RANGE 7 EAST, PL'FFS IN ERROR,

vs.

JOHN HOGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

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Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The United States of America to the honorable the Judges of the Supreme Court of the State of Missouri, greeting:

[SEAL.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at March term, A. D. 1859, between William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, plaintiffs, and John Hogan, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this 10th day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S., Missouri District.

Allowed by William Scott, presiding judge of the supreme court, within and for the State of Missouri, this 23d June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

In obedience to the commands of the within writ, I herewith send to the Supreme Court of the United States a full, true, and complete transcript of the record and proceedings of the supreme court of the State of Missouri, in the case of William Glasgow, junior, and William C. Taylor, surviving commissioners of the

16th section, township forty-five north, range seven east, against John Hogan, as fully as the same now remain of record and on file in my office.

Witness William S. Glanville, clerk of the supreme court within and for said State of Missouri, held at St. Louis, at office in St. Louis, this 20th day of July, A. D. 1859.

[SEAL.]

WM. S. GLANVILLE, *Clerk.*

THE STATE OF MISSOURI, *ss.*

Be it remembered, that on the nineteenth day of February, in the year of our Lord one thousand eight hundred and fifty-eight, there issued from the office of the clerk of the supreme court within and for the State of Missouri a writ of error, which is in words and figures as follows:

Writ of Error.

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the honorable the St. Louis Circuit Court in said State, greeting:

Whereas in the record and proceedings in a certain cause lately pending in the said court, wherein William Milburn, William Glasgow, and William C. Taylor, commissioners of the 16th section of township 45, are plaintiffs, and John Hogan defendant, in a suit for recovery of land, manifest error hath intervened, to the great damage of said plaintiffs, as by their complaint we are informed: Now, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, command you, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said court, so that we may have them before us at our supreme court to be begun and held in the city of St. Louis, in the county of St. Louis, in said State, on the third Monday in March next, so that our judges of the supreme court, on inspecting the records and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness William S. Glanville, clerk of our said supreme court, at office in the city of St. Louis, the nineteenth day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

[L. S.]

WM. S. GLANVILLE, *Clerk.*

Thereafter, on the 26th day of February, 1858, said writ of error was returned to the office of said clerk with the following return endorsed thereon:

STATE OF MISSOURI,
County of St. Louis, ss.

In obedience to the within writ, I hereby transmit a true and

complete transcript of the record and proceedings in the within named cause.

In testimony whereof I hereto set my hand and affix the seal of said court at office in the city of St. Louis, this 25th Feb'y, 1858.

STEPHEN RICE, *Clerk.*

Which transcript is in the words and figures as follows:

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered that at the April term, 1855, of the circuit court, within and for the county aforesaid, a transcript was filed, which is in the words and figures following, to wit:

Oct. Term, 1853.

STATE OF MISSOURI,
County of St. Louis, ss.

Be it remembered, that heretofore, to wit, on the fifteenth day of September, A. D. eighteen hundred and fifty-three, there was filed in the office of the clerk of the St. Louis land court within and for the county aforesaid, a certain petition, which is in the words and figures following, to wit:

Petition.

In the St. Louis Land Court.

WILLIAM MILBURN, WILLIAM GLASGOW, Jun., and William C. Taylor, Commissioners of the sixteenth section of township forty-five north, range seven east, Plaintiffs,
against
JOHN HOGAN, Defendant.

ST. LOUIS COUNTY.

The plaintiffs state that on the eleventh day of April, 1851, they were duly appointed commissioners, as aforesaid, by the St. Louis county court, pursuant to the provisions of an act entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east," approved March 3, 1851; that, as such commissioners, the plaintiffs were, on the first day of January, A. D. 1853, lawfully entitled to the possession of that tract of land situate in St. Louis county, known and described as the fractional section sixteen, township forty-five north, range seven east, according to the surveys of the public lands of the United States, and continue so entitled; that afterwards, on the second day of January, 1853, the defendant had entered into said tract of land, and enclosed with fences about thirty acres, parcel of said sixteenth section, and still unlawfully withholds the possession of

such parcel from the plaintiffs, to their damage two hundred dollars. The plaintiffs pray for judgment for the possession of said parcel of land, and for their damages aforesaid, and for damages for the detention thereof till the possession be delivered to them, &c.

By their attorneys,

FIELD, WILLIAMS & BATES.

Barton Bates, attorney for plaintiffs, being duly sworn, on his oath, says that he believes the foregoing petition and matters therein, as stated, to be true.

BARTON BATES.

Sworn to and subscribed before me, this 15th day of September, 1853.

CHARLES A. MANTZ, *Clerk.*

Summons.

The State of Missouri to the Sheriff of St. Louis County, greeting.

We command you to summon John Hogan to appear before the judge of our St. Louis land court, on the first day of the next term thereof, to be held at the city of St. Louis, within and for the county of St. Louis, on the first Monday of October next, then and there to answer the complaint of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the sixteenth section of township forty-five north, range seven east, as set forth in the annexed petition, and have you then and there this writ.

Witness Chas. A. Mantz, clerk of our said court, in the city of St. Louis, with the seal thereof hereto affixed, at office, this [L. S.] fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-three.

CHARLES A. MANTZ, *Clerk.*

Sheriff's Return.

Executed this writ in the county of St. Louis, on the 17th day of September, 1853, by delivering a copy of the within writ and petition, as furnished by the clerk, to the within named defendant, John Hogan.

JOHN M. WIMER,
Sheriff.
By THO'S CHADBOURNE,
Deputy.

Fee, $1.00.

Demurrer Filed.

And afterwards the following proceedings were had, to wit:

Monday, October 10th, 1853.

WILLIAM MILBURN et al.
vs.
JOHN HOGAN.

Demurrer filed and leave granted to answer within one week.

In the St. Louis Land Court—Oct. Term, 1853.

WILLIAM MILBURN et al., Com'rs, &c.
vs.
JOHN HOGAN.

Demurrer.

Said defendant demurs to the plaintiffs' petition, for the following reasons:

1. Because there is a defect of parties plaintiff; the said plaintiffs have no title in the premises sued for, the title they claim, in said petition, being in the State of Missouri; the said plaintiffs never had any possession of said premises, nor any right to possession, such right to possession being in the State of Missouri.

2. Because the petition does not state facts sufficient to constitute a cause of action, in this: that the petition shows that the title of the premises it claims is not plaintiffs', nor the possession, nor the right to such possession.

T. POLK, *P. Q.*

Demurrer Overruled.

And afterwards, the following further proceedings were had, to wit:

Wednesday, October 12th, 1853.

WILLIAM MILBURN et al.
vs.
JOHN HOGAN.

Now, at this day, come the said parties, by their attorneys, and the demurrer of the defendant to the plaintiffs' petition being heard, and by the court fully understood, the court doth determine and adjudge that said demurrer be overruled.

Answer Filed.

And afterwards, at the same term, the following further proceedings were had, to wit:

Tuesday, Oct. 13, 1853.

WILLIAM MILBURN
vs.
JOHN HOGAN.

Answer filed.

Answer.

Land Court—Oct. Term, 1853.

WILLIAM MILBURN et al., Com'rs, &c.,
vs.
JOHN HOGAN.

Defendant denies that said plaintiffs, as such commissioners as aforesaid, or in any other manner howsoever, were, on the first day of January, A. D. 1853, or at any other time, lawfully entitled to the possession of any land whatsoever, at any time in the possession of the defendant. He also denies that he unlawfully withheld at the commencement of this suit, or at any other time, the possession of about thirty acres of land, or any other land whatsoever, from said plaintiff, to their damage $200.00, or any other sum whatsoever.

As to whether the said plaintiffs, on the 11th day of April, A. D. 1851, were duly appointed commissioners by the St. Louis county court, pursuant to the provisions of an act entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east," approved March 30th, 1851, this defendant has no knowledge or information sufficient to form a belief. Defendant further says, that by the act of Congress of the United States of America, approved the 13th day of June, A. D. 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," there was confirmed to the legal representatives of Auguste Condé a common-field lot belonging to the town of St. Louis, lying in the Big or Grand Prairie, and being one of the common-field lots of the said Grand Prairie, and being two arpens in front by forty arpens in depth, and bounded south by the field-lot formerly claimed by Parent, east by vacant land, north by the field-lot claimed formerly by Francis Moreau, and west by vacant lands; which said common-field lot was cultivated and possessed by said Auguste Condé, and those under whom he claimed the same, prior to the 20th day of December, A. D. 1803; and subsequently, on or about the 28th day of July, A. D. 1825, in pursuance of an act of Congress approved the 26th day of May, A. D. 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve," entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,'" the owners and claimants of said common-fields of said Grand Prairie proceeded to designate their said lot, by proving before the recorder of land titles for said Territory of Missouri, Theodore Hunt, esq., cultivation and possession of said lot by such owners and claimants and those under whom they claimed, prior to the 20th day of December, A. D. 1803, and the boundaries and extent of said lot. Defendant also says, the said legal representatives of Auguste Conde have had the actual, peaceable and quiet possession of a part of the said common-fields, claiming title to the whole, and therefore the legal possession of the whole of said lot, uninterruptedly, for more than twenty successive years next before the commencement of this suit; say from about day of A. D. 1830, until the present time, claiming title thereto and to be the owners thereof. He also says that he is one of the legal representatives of the said Auguste, and as such he is the owner of and

entitled to an undivided five-ninths part of said common-field lot. As such owner as aforesaid, on or about the first day of March, A. D. 1851, he enclosed about twenty-two acres of the eastern end of said lot with a good and valuable fence, and erected a dwelling-house on the same, in which he has ever since and still does now reside with his family, together with all the necessary out-buildings and other improvements, all of which improvements and betterments, so put by him thereon, were made by him in good faith under the aforesaid title, and are valuable and lasting, and are of the value of about $3,500.00. And defendant prays for compensation for all such improvements, if judgment of dispossession shall be given against him in this cause.

TRUSTEN POLK,
Att'y for Def't.

John Hogan, the above named defendant, makes oath and says, that he believes the foregoing answer, and the matters and things as therein stated, are true.

JOHN HOGAN.

Sworn to and subscribed before me this 13th day of October, 1853.

CHAS. A. MANTZ, *Cl'k.*

Reference to Copies of Deeds, No. 1 to No. 4.

And said defendant files herewith the following documents, deeds and muniments of title, the same being copies of the originals, not being in his possession, power or control.

Afterwards the following further proceedings were had, to wit:

Oct. 15th, 1854, Saturday.

WILLIAM MILBURN et al.
vs.
JOHN HOGAN.

Continued.

And afterwards, at the March term, 1854, the following further proceedings were in this cause, to wit:

Petition for change of Venue presented and refused.

Monday, March 13th, 1854.

WILLIAM MILBURN, WILLIAM GLASGOW, Jr., and WILLIAM C. TAYLOR, commissioners of the 16th section, township 45 north, range 7 east,
vs.
JOHN HOGAN.
} Ejectment.

And now at this day defendant presents his petition for a change

of venue, and satisfies the court that due notice of the presentation thereof has been given, and the court having seen and considered the same, doth determine that the obligations in said petition contained are insufficient. It is therefore considered by the court, that the prayer of the petitioner be not granted. Thereupon, on motion of plaintiff, the petition is withdrawn, and leave granted defendant to file an amended petition.

Afterwards the following further proceedings were had in this cause, to wit:

Filed March 11th, 1854.

Petition for change of Venue presented and refused.

In the St. Louis Land Court—March Term, A. D. 1854.

WILLIAM MILBURN et al.
vs.
JOHN HOGAN.

To the honorable the St. Louis land court: The petition of John Hogan, the above named defendant, respectfully represents to this honorable court, that he has been informed, and believes the fact to be, that the judge of this court has acted as counsellor to the plaintiffs in this case in respect to the title which they seek to establish, and which is involved in this suit, and has given his opinion in his professional capacity, and as aforesaid, in regard to said title, and questions and points connected therewith, and has therefore prejudged the same.

Defendant therefore says, that the judge of this court is prejudiced in favor of said plaintiffs, and against the defendant in this cause; and for the causes aforesaid, he prays a change of venue of this case; and, as in duty, &c.

Petitioner states, further, that he has not before made and presented his petition, because he has been confined to his room by sickness ever since and before the commencement of this term of this court.

JOHN HOGAN.

John Hogan, the above named defendant, makes oath, and says that he believes the foregoing petition and the matters and things therein stated are true, and alleges that he has just cause to believe that he cannot have a fair trial in the above cause, on account of the causes alleged in said petition and herein.

JOHN HOGAN.

Sworn to and subscribed before me, this 11th day of March, A. D. 1854.

WM. G. BLACKWOOD, [SEAL.]
Notary Public.

Amended Petition, presented and granted for change of venue.

And afterwards, at the same term, the following further proceedings were had in this cause, to wit:

Monday, March 27th, 1854.

WILLIAM MILBURN, WILLIAM GLASGOW, Jr., and WILLIAM C. TAYLOR, Commissioners of the 16th section, township 45 north, range 7 east,	Ejectment.—Change of Venue.

The said defendant having heretofore, to wit, on the fourteenth day of March, instant, presented his petition for a change of venue of this cause, and having satisfied the court that due notice of the presentation thereof had been given; and the said petition containing the allegation that the mind of the judge is prejudiced against the defendant's interest, and in favor of the plaintiffs in this cause, and that the judge of this court has been of counsel to the plaintiff in this cause, touching the title to the land involved in this cause, to wit, "the sixteenth section of township forty-five north, range seven east," and the same being supported by his affidavit, it is ordered by the court that the prayer of the petitioner be granted, and that the clerk of this court make out a full transcript of the record and proceedings in this cause according to law, and to certify the same to the circuit court of St. Louis county.

Afterwards, to wit, on Tuesday, March 14th, 1854, defendant presented his amended petition, which is in the words and figures following, to wit:

In the St. Louis Land Court.—March Term, 1854.

WILLIAM MILBURN et al.
vs.
JOHN HOGAN.

To the Honorable the St. Louis Land Court:

The petition of John Hogan, the defendant in the above entitled cause, respectfully represents, that he petitions for a change of venue in this cause, for the following causes:

First. That the judge of this court is prejudiced against this defendant, and in favor of the plaintiffs in this cause.

Secondly. He has been informed, and believes the fact to be, that said judge has acted as counsellor to the plaintiffs in this case in respect to the title which they seek to establish, and which is involved in this suit, and has given his opinion in his professional capacity, and as aforesaid, in regard to said title and questions and points connected therewith, and has prejudged the same. And he further says, he has not made and presented his petition before the

11th of March, inst., because he has been confined to his room by sickness ever since and before the commencement of this suit.

JOHN HOGAN.

John Hogan, the above named defendant, makes oath, and says that he believes the foregoing petition and the matters therein, as stated, are true, and alleges he cannot have a fair trial in this above cause, on account of the causes alleged herein and in said petition.

JOHN HOGAN.

Sworn to and subscribed before me, this 13 day of March, A. D. 1854.

WILLIAM G. BLACKWOOD, [SEAL.]
Notary Public.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Chas. A. Mantz, clerk of the St. Louis land court, certify that the above and foregoing is a true and complete transcript of the record and proceedings in the case of William Milburn, William Glasgow, jr., and William C. Taylor, commissioners of the 16th section, township 45 north, range 7 east, plaintiffs, against John Hogan, defendant, as fully as the same remains of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court at office, in the city of St. Louis, this twenty-[SEAL.] eighth day of August, A. D. eighteen hundred and fifty-four.

CHAS. A. MANTZ, *Cl'k.*

And afterwards, the following proceedings were had in the St. Louis circuit court, at the March term, 1856, Wednesday, the seventh of May, 1856, to wit:

WILLIAM MILBURN et al., Plaintiffs,
vs.
JOHN HOGAN, Defendant. } Continued.

And afterwards, to wit, at the March term, 1857, of said court, on Monday, 25 of May, 1857, on the motion of the parties herein, it is ordered by the court that this cause be set for the second Monday of the next term of this court.

Judgment.

And afterwards, to wit, at the October term, 1857, of said court, on Monday, *Saturday*, October 17th, A. D. 1857, the following proceedings were had in said cause:

WILLIAM MILBURN, WILLIAM GLASGOW, Jr., and WILLIAM C. TAYLOR, Commissioners of the 16th section of township 45 north, range 7 east,
vs.
JOHN HOGAN.

Now, at this day, come the said parties, by their respective attorneys, and thereupon come also a jury, to wit: N. Barnum, Henry Bischoff, Michael Cook, Frederick Meyer, Peter Meyer, William Nalley, Herman Meyer, G. Hennan, Sand. G. Bull, Charles M. O'Hara, Ludden Davis, and George Wm. Fisher, twelve good and lawful men, who being duly elected, tried, and sworn, the issue therein joined well and truly to try, the trial of this cause progressed; and being finished, the jurors aforesaid, upon their oaths aforesaid, find the issue herein joined in favor of said defendant. It is therefore considered by the court that said plaintiffs take nothing by their said suit in this behalf, but that said defendant go hence without day, and recover of said plaintiffs his costs and charges herein expended, and have thereof execution.

Motion for New Trial Overruled.

And afterwards, to wit, at October term, 1857, on Monday, November the 30th, 1857, the following proceedings were had in said cause:

WILLIAM MILBURN et al., Commissioners of the 16th section, township 45 north, range 7 east,
vs.
JOHN HOGAN.

The court having duly heard and considered the motion of said plaintiffs for a new trial of this cause, and being thereof fully advised, doth order that said motion be overruled.

Bill of Exceptions.

Bill of exceptions filed, which is in the words and figures following, to wit:

In the St. Louis Circuit Court.

WILLIAM MILBURN and others, Commissioners, &c., Plaintiffs,
vs.
JOHN HOGAN, Defendant.

Bill of Exceptions.

This case was tried by a jury on the 17th day of October, 1857.

On the trial the plaintiffs, to maintain the issue on their part, gave in evidence the act of Congress approved March 6th, 1820, entitled "An act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain territories;" also an ordinance of the people of the State of Missouri passed in the convention on the 19th day of July, 1820, entitled "An ordinance declaring the assent of the people of the State of Missouri, by their representatives in convention assembled, to certain conditions and provisions in the act of Congress of the 6th of March, 1820, entitled "An act to authorize the people of Missouri Territory to form a State government and constitution, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain territories;" and also an act of the general assembly approved March 3d, 1851, entitled "An act to authorize the sale of fractional section sixteen, township forty-five north, range seven east."

The County Court Appointing Plaintiffs Commissioners.

The plaintiffs then read in evidence the record of the St. Louis county court, appointing the plaintiffs commissioners under the last mentioned act, as follows:

In the St. Louis County Court, April 11th, 1851.

STATE OF MISSOURI,
County of St. Louis, ss.

The court appointed William Milburn, William Glasgow, jr., and William C. Taylor, commissioners, to take possession of section number sixteen, township forty-five north, range 7 east, and to sell the same or any part thereof on such terms and in such manner as the court shall hereafter direct; the said commissioners having all the powers and subject to all the restrictions of the act of the general assembly of the State of Missouri, entitled "An act to authorize the sale of fractional section sixteen, township forty-five, range seven east," approved March 3d, 1851.

STATE OF MISSOURI,
County of St. Louis, ss.

I, Josiah Thornburgh, clerk of the county court within and for the county aforesaid, hereby certify that the foregoing is a true copy from the record of said court in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 29th day of September, A. D. 1857.

[SEAL.]

JOSIAH THORNBURGH, *Cl'k.*

Brown's Field-notes.

The plaintiffs then read in evidence the field-notes of Brown's survey of fractional section sixteen, made in 1818, as follows:

Field-notes of section 16, town'p 45, range 7 east.

From a point in widow Camp's N. boundary, 15.75, westerly of Peltier's west line, where set a post, from which a b. o. 3 in. diam. bears N. 39 W. 58 l., and a do. 3 in. diam. bears S. 19 W. 100 l., (north) between sec's 15 and 16, t. 45 N., r. 7 E.

9 53 set ¼ sec. post, from which a w. o. 3 in. diam. bears N. 2 E. 25 l., and a do. 3 in. diam. bears N. 89 E., 21 l.

29 53 the wedge of a pond 2 ch's wide.

49 50 set post corner to sec's 9, 10, 15, and 16, in a mound, west, between sec's 9 and 16, t. 45 N., r. 7 E.

40 00 set ¼ sec. post in a hazel thicket.

80 00 set post corner to sec's 8, 9, 16, and 17, in a hazel thicket mound; land lies well; good soil; und. g'th hazel bushes. South, between sec's 16, 17, t. 45 N., r. 7 E.

40 00 set quarter sec. post in mound.

42 00 a branch 5 l. bears southerly.

44 00 left branch bearing S. E.

51 00 a spring branch bears east.

57 69 intersected E. Yoste's 80 arpt. tract, 7 chains W. of his N. E. corner on Chouteau; set stone; land gently rolling prairie.

OFFICE OF THE SUVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, Oct. 9, 1857.

The above is a correct copy from book 23, and page 180 to 183, of the field-notes of Missouri surveys on file in this office, of the original field notes of the lines between sections 15 and 16, 9 and 16, and 16 and 17, of township 45 north, range 7 east, of the 5th principal meridian, as said lines were surveyed in 1818 by John C. Brown, under contract of 31st March, 1817.

JOHN LOUGHBOROUGH,
60 cents. *Surveyor General.*

The plaintiff then exhibited in evidence an authenticated plat of township 45 north, range 7 east, certified by the surveyor general of Ill. and Mo., the 17th of June, 1845, to be a true copy, and an authenticated plat and description of the survey of the out-boundary of the town of St. Louis, as established by the surveyor general. It was agreed between the parties that authenticated copies of the foregoing townships and out-boundary plats from the office of the surveyor general, or the General Land Office at Washington, may be used before any appellate court to which this

cause may be carried, with like effect as if the same were set forth in this bill of exceptions at large. The defendant admitted that the land in controversy lay without the exterior limits of said out-boundary survey. The defendant further admitted that at the commencement of this suit he was in possession of a part of said fractional sixteenth section, as stated in his answer. The plaintiffs then rested.

The defendant, to maintain the issue on his part, read in evidence the act of Congress entitled "An act making further provision for settling claims to land in the Territory of Missouri," approved June 13th, 1812; and also the act of Congress entitled "An act supplementary to an act passed on the 13th day of June, one thousand eight hundred and twelve, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri,' approved May 26th, 1824." The defendant then offered in evidence the proceedings of Recorder Hunt, under said act of May 26th, 1824, in respect to the claims of Conde's representatives.

The plaintiffs objected to the reception of said evidence, and insisted that the same was incompetent:

First. Because, in so far as said proceedings can in any wise affect the land now in controversy, the same were had and the proofs therein taken without any notice to the State of Missouri, to the inhabitants of township 45, or to plaintiffs.

Second. Because said proceedings, so far as they effect the land in dispute, were repugnant to the Constitution of the United States and of this State, and in derogation of the sovereignty of the latter.

The court decided that the proffered evidence was competent and legal, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said proceedings and proofs were then read to the jury, as follows:

Hunt's Testimony for Conde's representative.

Testimony relating to town and village lots, out-lots, and common-field lots, in, adjoining or belonging to the several towns and villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Breton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress passed May 26th, 1824.

THEODORE HUNT,
Recorder of Land Titles.

See Hunt's minutes-book N. 1, page 1.

Auguste Conde's legal representatives claim a common-field lot in the Big Prairie, near St. Louis, containing two arpens in front, by about forty in depth, bounded south by the field-lot claimed by

Parent, east by vacant land, north the field-lot claimed formerly by Francis Moreau, and west by vacant land.

Baptiste Reviere, being duly sworn, says he knows the field-lot claimed, and that upwards of forty years ago this field-lot was owned and cultivated by Auguste Condé, who cultivated the same from that time until his death.

his
BAPTISTE ⋈ RIVIERE.
mark.

July 28, 1828. Sworn to before me.

THEODORE HUNT,
Recorder Land Titles.

René Dodier, being duly sworn, says he knows the field-lot claimed, and that he knew Doct. Auguste Condé; and to the knowledge of this deponent, this field-lot was owned and cultivated Auguste Condé until his death, and after that he always understood that it belonged to the heirs of Dr. Auguste Condé; and to the knowledge of this deponent, it was cultivated until the common-field fence was taken down.

his
RENE ⋈ DODIER.
mark.

Sworn to before me, July 28, 1825.

THEODORE HUNT,
Recorder of L. Titles.

René Paul, being duly sworn, says that he has truly translated and read the above written to Baptiste *Buccaue* and René Dodier, before the signing of the same by them, and they said it was true; and further, this deponent says he was on this field-lot yesterday, in company with these witnesses, and that this lot showed evident marks of former cultivation.

R. PAUL.

Sworn to before me, July 28, 1825.

THEODORE HUNT,
Rec'r of L. T.

(See Hunt's minutes-book No. 2, page 100.)

Certificate of Confirmation.

RECORDER'S OFFICE,
ST. LOUIS, 30*th October*, 1856.

The foregoing is correctly transcribed from the book on file in this office, containing the minutes of the testimony taken by Theodore Hunt, recorder of land titles, pursuant to the 1st section of the act of Congress of the 26th May, 1824, supplementary to the

act of 13th June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri."

ADOLPH RENARD,
United States Recorder of Land Titles in the State of Missouri.

Fee $0 75.—A. R.

Registry of Certificates of Confirmation on town lots and common-field lots, issued by the Recorder of Land Titles.

In whose name issued.	Date.	Situation.	Remarks.	Quantity.
Auguste Conde's legal representatives.	1825. July 28th.	Big Prairie common-field lots.	Bounded south by the field-lot formerly claimed by Parent, east by vacant land, north by the field-lot claimed formerly by Francis Moreau, and west by vacant land.	Two front by about forty deep.

RECORDER'S OFFICE,
ST. LOUIS, 30 *Oct.*, 1856.

The above is correctly transcribed from the original list in this office, which was prescribed by the 3d section of the act of 26th May, 1824, supplementary to the act of 13th June, 1812, making further provision for settling the claims to land in the Territory of Missouri.

ADOLPHE RENARD,
in the State of Missouri.

Fee 50 c.—A. R.

Copy of List from Surveyor Gen'l's Office.

Defendant then offered in evidence the authenticated copy of list from surveyor general's office of the confirmations furnished that office by the recorder of land titles, which is as follows:

(593.)—No. 590.

Auguste Conde's legal representatives.	1825. July 28.	Big Prairie Common-field lot.	Bounded south by the field-lot formerly claimed by Parents, east by vacant land, north by the field-lot claimed formerly by Francis Moreau, and west by vacant land.	Two front by about forty deep.

RECORDER'S OFFICE,
St. Louis, October 15th, 1827.

I, Theodore Hunt, recorder of land titles in the State of Mis-

souri, do certify the foregoing record, contained in forty-seven pages, commencing with Louis Lemond, and ending with the field-lot of Titus Strickland, contains all the village lots, out-lots, and common-field lots; the boundaries of which have been proven before me, under the provisions of an act of Congress approved 26th of May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled 'An act making further (provision) provisions for settling the claims to land in the Territory of Missouri.' "

THEODORE HUNT.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, May 18th, 1857.

I certify that the above data, in relation to the claim of Auguste Condé's legal representatives, in Big Prairie common-fields, and the annexed certificate of the recorder of land titles, are correctly copied; the former from page 26, and the latter from pages 48 and 49, of a list of this office, which was returned to the surveyor general by said recorder in pursuance of the 3d section of the act of Congress of the 26th May, 1824, referred to in the above mentioned certificate.

JOHN LOUGHBOROUGH,
Surveyor General.

The defendant then tendered in evidence a paper, purporting to be a survy, duly certified by the surveyor general, of the lot of Condé's representatives, as proved before Recorder Hunt in the proceedings just before set forth, and being U. S. survey No. 1,660. The plaintiffs objected to the reception of such paper, because—

1. The survey in manner and form as the same appeared to have been made was not authorized by law.

2. Said survey embraced the land in controversy, which the United States had absolutely sold and granted to the State of Missouri more than thirty years before the date of such survey. The court decided that said paper was good and competent evidence, and permitted the same to be read to the jury. To such action of the court the plaintiffs duly excepted. The said paper was then read as follows:

Survey No. 1,660.

Plat and description of land of 68.18 acres, situate in the Grande Prairie common-fields of St. Louis, in township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri, executed in the years 1850 and 1855, by William H. Coz-

ens, deputy surveyor, under instructions from the surveyor general for Illinois and Missouri, dated the 9th of May, 1846, and the 22d of February, 1855; this being the tract of "two arpents front, by about forty deep," claimed by Auguste Condé's legal representatives, confirmed by the act of Congress of the 15th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," the extent and boundaries whereof were proven on the 28th of July, 1825, before Theodore Hunt, United States recorder of land titles in the State of Missouri, in conformity with the provisions of the act of Congress of the 26 May, 1824, entitled "An act supplementary to an act passed on the 13th June, one thousand eight hundred and twelve, entitled An act making further provision for settling the claims to land in the Territory of Missouri." See Recorder Hunt's minutes-book No. 2, page 100, in the office of the recorder of land titles. See also on Hunt's lists No. 593, in the office of the surveyor general.

T. 45 N., R. 7 E., of the 5th Pl. Mdn.

[*For Plat see original, page* 25.]

Description.

Description: Beginning at a stone fourteen inches long, eight inches wide, four inches thick, the northeast corner of survey numbered one thousand six hundred and sixty-one in the name of Francois Faustin dit Parent's legal representatives, and the southeast corner of this survey; thence north sixty-one degrees west, with the northern boundary of the Francois Faustin survey; at fifty chains and eighty-six links a stone thirteen inches long, seven inches wide, three and a half inches thick, at the intersection with the north boundary of section sixteen in township forty-five north, range seven east, which is also a line of survey numbered two thousand four hundred and ninety-nine, in the name of Martin Coontz or legal representatives; at sixty-eight chains and ninety-six links a stone twelve inches long, nine inches wide, three and a half inches thick, at the intersection with the line between the Martin Coontz survey and survey numbered two thousand seven hundred and twelve, in the name of James Conway or legal representatives; at seventy-seven chains and sixty-four links, a point sixty-eight links southward of the Condé's spring, at seventy-eight chains and seven links cross a spring branch; at seventy-eight chains and sixty-nine links, a branch five links wide runs southward; at ninety chains and eighty-nine links a stone nine and a half inches long, nine and a half inches wide, and three inches thick, at the intersection with the line between James Conway survey and survey numbered two thousand six hundred and ninety-two, in the name of Joseph Généreng

or legal representatives; and at one hundred and sixteen chains and ninety-seven links a stone fifteen inches long, six and a half inches wide, three inches thick, the southwest corner of this survey and the northwest corner of Francis Faustin's survey; thence north twenty-eight degrees and forty-five minutes east, five chains and eighty-three and one-third links, to a stone, nine inches long, nine inches wide, four inches thick, the northwest corner of this survey; thence south sixty-one degrees east, at thirty-six chains and fifty seven links a stone thirteen inches long, five inches wide, three inches thick; at the intersection with the line between the Joseph Généreng and James Conway surveys; at forty-four chains and seventy-one links a stone at the intersection with the line between the James Conway and the Martin Coontz surveys; at fifty-four chains and twenty-four links a spring branch five links wide runs southwest; at sixty chains and ninety links a point opposite the northeast corner of a frame house, which is ninety links southward; at seventy-six chains and forty-five links a stone sixteen inches long, eight inches wide, and three inches thick, at the intersection with the north boundary of section sixteen, which is also a line of the Martin Coontz survey; and at one hundred and sixteen chains and eighty-five links a stone twelve inches long, eight inches wide, four inches thick, the northeast corner of this survey; thence south, twenty-eight degrees and forty-five minutes west, five chains and eighty-three and one-third links to the beginning corner.

Interferences of Survey No. 1,660 *with the Surveys previously made.*

Statement of the Interferences of Survey No. 1,660 with the Surveys previously made.

The following surveys are founded upon certificates issued by Frederick Bates, United States recorder of land titles in the Territory of Missouri, under the provision of the act of Congress of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquake." 1st. Survey No. 2,692, certificate No. 19, issued by Joseph Généreng or legal representatives, for 160 acres, on the 12th of November, 1815; located by Joshua Barton, on the 12th of December, 1817; surveyed by Joseph C. Brown, on the 23d of June, 1819; patent certificate No. 318 issued by the recorder of land titles on the 4th of February, 1823; of the interfering part 18.24 acres.

2d. Survey No. 2,712, certificate No. 348, issued to James Conway or legal representatives, for 200 arpents, on the 20th of November, 1817; located on the 16th of June, 1818, by Taylor Berry and Mathias M'Grif; surveyed by Joseph C. Brown, on the 23d of June, 1819; patent certificate No. 322, issued by the recorder

of land titles, on the 20th of May, 1823. Area of the interfering part = 8.80 acres.

3d. Survey No. 2,499, certificate No. 145, issued to Martin Coontz or legal representatives, for 640 acres, on the 18th of September, 1816; located by John McKnight and Thomas Brady, on the 29th of May, 1818; surveyed by Jos. C. Brown, in July, 1818; patent certificate No. 309, issued by recorder of land titles on the 17th of November, 1822. Area of interfering part = 14.54 acres.

4th. Section 16, reserved for the schools; surveyed in the year 1818, by Joseph C. Brown. Area of the interfering part = 26.60 acres.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, March 23, 1857.

The foregoing plat and description of survey numbered one thousand six hundred and sixty are this day approved, as recorded on pages two hundred and ninety-four, two hundred and ninety-five, and two hundred and ninety-six of this book.

JOHN LOUGHBOROUGH,
Surveyor General.

OFFICE OF THE SURVEYOR GENERAL
FOR ILLINOIS AND MISSOURI,
St. Louis, May 18, 1857.

The foregoing plat and transcript of survey No. 1,660 are correctly copied from pages 294, 295 and 296 of record book "F," on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

Defendant then gave in evidence the following confirmation certificate, accompanied by a survey, which was a copy of the aforesaid United States survey No. 1,660, to wit:

Confirmation Certificate No. 141.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, August 7, 1857.

It is hereby certified, that under the 1st section of the act of Congress, approved on the 13th June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri," and the two acts of Congress, of the 26th May, 1824, and 27th January, 1831, supplemental or having reference thereto, Auguste Condé's legal representatives were confirmed in their claim to a tract of land of two arpents front by about forty deep, situated in the Grande Prairie common-fields of St. Louis.

It is further certified, that the same has been lawfully surveyed, in conformity with said confirmation in the said common-field, being in township 45 north of the base line, range 7 east of the 5th principal meridian, as appears from the accompanying plat and transcript of survey 1,660, authenticated and returned to this office on the 3d of August, 1857, by Jno. Loughborough, surveyor general for the district of Illinois and Missouri, to wit: Beginning at A on the plat, the southeast corner of the survey, and running thence north, 61 degrees west, with the southern line of the survey, 116 chains and 97 links to its southwest corner; thence north, 28 degrees and 45 minutes east, with the western line of the survey, 5 chains and 83⅓ links to its northwest corner; thence south, 61 degrees east, with the northern line of the survey, 116 chains and 80 links to its northeast corner; and thence south, 28 degrees and 45 minutes west, with the eastern line of the survey, 5 chains and 83⅓ links to the beginning corner. Said survey, No. 1,660, contains 68 $\frac{18}{100}$ acres.

It is further certified, that the whole area of said survey is interfered with by surveys previously executed, viz: to the amount of 26 $\frac{60}{100}$ acres in section sixteen, reserved for the schools, and in the following surveys of locations under the act of Congress of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the county of New Madrid, in Missouri Territory, who suffered by earthquakes," to wit: to the amount of 18 $\frac{34}{100}$ acres in survey No. 2,692, under certificate No. 19, issued to Joseph Généreng or legal representatives, for 160 acres; of 8 $\frac{8}{100}$ acres in survey No. 2,712, under certificate No. 348, issued to James Conway or legal representatives, for 200 acres; and of 14 $\frac{54}{100}$ acres in survey No. 2,499, under certificate No. 145, issued to Martin Coontz or legal representatives, for 640 acres.

In testimony whereof I have hereunto set my name, on the day and in the year above written.

ADOLPH RENARD,
United States Recorder of Land Titles
in the State of Missouri.

Recorded at pages 138 and 139 of book of confirmation certificates.

The defendant then offered the testimony of Antoine Smith, to prove that Condé, prior to the 20th day of December, 1803, cultivated the land now in dispute, as a lot in the Grand Prairie, under circumstances causing the same to be confirmed by the first section of the act of Congress of June 13, 1812. The plaintiffs objected to the reception of said testimony, on the ground that it was not competent for a party claiming under that section to adduce testimony to show that the subject of confirmation was situated beyond the out-boundary line established by government. The court over-

ruled the objection and permitted the testimony to be read to the jury, and the plaintiff duly excepted. The said testimony was read, as follows:

Antoine Smith's Deposition.

The deposition of Antoine Smith, produced, sworn, and examined at the office of the clerk of the circuit court, in the city of St. Louis, within the county of St. Louis and State of Missouri. Taken for the purpose of perpetuating his testimony, under and in virtue of a commission ordered by honorable circuit court of said county of St. Louis, and issued by the clerk of said court upon the petition of Mary Garnier and John Hogan, in relation to the matters mentioned in said petition. Taken in pursuance of said commission, which with the said petition and the order of said circuit court, as also the notice and evidence and service of the same, is hereto annexed.

February 16th, 1852.

Antoine Smith, of lawful age, being produced, sworn and examined on his oath, deposeth and saith as follows:

1st ques. What is your language; quelle votre langue?

This question is put both in French and English.

Ans. Ma langue en la langue Francaise; my language is the French language.

(This deposition, written in the French language, is accompanied with a translation in English as follows:)

Ques. Do you speak the English language?

Ans. I speak it a little, but not well enough to give my testimony in that language.

Ques. What is your age?

Ans. My age is eighty years, since the sixth day of last January.

Ques. Where were you born?

Ans. I was born in Canada.

Ques. Where have you lived since your birth?

Ans. I lived in Canada until the age of eighteen, and then I came here.

Ques. Have you lived here all the time since you first came here?

Ans. I lived here fourteen years—in St. Louis; after that I moved to Florissant, where I now reside.

Ques. What trade did you carry on when you first came to St. Louis, until you went to reside at Florissant?

Ans. When I first came here, I went to work at Mr. Chouteau's mill, where I remained for two years; then I followed the employment of a farmer in working for different persons, until I went to reside in Florissant.

Ques. Where did you *worked* principally as a farmer?

Ans. In the Grande Prairie.

Ques. Where is situated the Grande Prairie?

Ans. It is is situated on the west of St. Louis, now the Grand Marais.

Ques. On what part of the Grande Prairie did you particularly work?

Ans. On this side of the Grand Marais, and also on the other side of the Grand Marais, but more usually on this side.

Ques. Where is situated the Grand Marais which you speak of?

Ans. At the end of the Frait quarée, westwardly of the lands of the Grand Prairie, distant about four miles from here.

Q. When you say you worked on the other side of the Grand Marais, do you mean on the west, or where the sun sets?

Ans. On the west of Grand Marais.

Ques. Will you name some person for whom you worked in the Grand Prairie?

Ans. Yes; I worked for Joseph Calve two years consecutively during the harvest time; I worked for Francois Marechal and Baribeau, and great many others—for every one who wanted me.

Ques. When did you begin to work for Calve?

Ans. Two years after I came to this country, in the beginning of the third year.

Ques. Did you know some one called Auguste Condé?

Ans. No, he was deceased when I came to this country.

Ques. Do you know in the Grand Prairie any lot which was acknowledged as Condé's lot?

Ans. Yes.

Ques. Where was it situated, and which were its boundaries?

Ans. It was bounded on the east by a parcel of vacant land, on the north by Francois Moreau, on the south by Jaques Faustin surnamed Parent, on the west by the wood of the Grande Marais situated in the Grand Prairie.

Ques. When did you first see that lot?

Ans. I saw it the first year I went to work in the Grand Prairie; they showed it to me as Condé's lot.

Q. Say what was the appearance of the lot when you first saw it?

Ans. The first time they showed it to me, it was a lot of two arpents in width by about forty deep.

Ques. Was there any evidence of cultivation on the lot when you first saw it?

Ans. Yes, there was good evidence.

Ques. By whom did they tell you that that lot has been cultivated?

Ans. By all the persons of the Grand Prairie; there was not a single person who did not know the lot as Condé's lot.

Ques. Who did they say had cultivated it?

Ans. They say that it was Condé.

Ques. Do you remember any natural object on or near that lot by which you can recognise it?

Ans. Yes, there is a swamp (a "Marais" in the French text) on the east; I do'nt know any other at that time.

Ques. Was there any spring near or on the lot?

Ans. No, I never knew any spring on the land of Condé, but there was one on Moreau's land, which is very near.

Ques. Do you know the lot of Francois Dunegart?

Ans. Yes.

Ques. Where was it situated?

Ans. It was in Grande Prairie, bounded on the north by Joseph Calve, on the south by Jaques Marechal, on the east by a parcel of vacant land, on the west by the wood of the Grande Marais.

Ques. The lot of Condé of which you have spoken, is it on the north or south side of the lot of Dunegart?

Ans. It is on the south side.

Ques. How much to the south?

Ans. There were five arpents and a half between both lands; there was the land of Jaques Marechal, one arpent in width by about forty in depth, like the others; of Francois Bequette, one arpent in width by the same in depth; of Louis Dehaitre, one arpent in width by the same in depth; of Francois Marechal, one half of an arpent in width by the same in depth; of Charles Simoneau, one arpent in width by the same depth; of Francois Moreau, one arpent in width by the same in depth.

Ques. Those lots of which you have just spoken, were they or were they not in the common-fields of the village of St. Louis?

Ans. They were in the common-field belonging to the village of St. Louis in the Grande Prairie.

Ques. When you first went to work in the Grande Prairie, did you see some stones or posts which designated the boundaries of the common-fields of the Grande Prairie?

Ans. Yes; I saw some stones, but no posts, which marked the eastern and the western boundaries.

Ques. Those stones, were they acknowledged by the old inhabitants of that time as the boundaries of the common of Grande Prairie?

Ans. Yes; and their marks are under them, if they did not move them out.

Ques. When did you see those stones, or any of them, for the last time?

Ans. I did not see them for six or seven years. I have not seen them since I showed them to Cozens?

Ques. Why did you show them to Mr. Cozens?

Ans. To show him the boundaries of the Grande Prairie to survey it.

Ques. Who is in the possession of the lot of Condé, of which you have just spoken?

Ans. I don't know them. There are some persons; I believe they are German.

Ques. Did you know Rene Dodier and Baptiste Riviere, surnamed Bacanne?

Ans. Yes, I have; know them well.

Ques. Did they cultivate any lands in the Grande Prairie?

Ans. The old Bacanne cultivated some land on the side of the old orchard going to the "Cul de Sac," in what is now Peter Lindle's park. I did not see Dodier cultivating any land in the Grande Prairie, but I saw him cultivating some in the fields of the prairie of Denoyers.

Ques. Do you know if they knew well the proprietors of the lots of the Grande Prairie, and the situation of the lots?

Ans. If they did not know them, nobody knew them.

End of the examination-in-chief.

"Cross-examined."

Cross-examination.

Ques. Do you remember when the house of the government and the fort immediately in the rear, on the side of the *Hell*, have been finished?

Ans. I cannot tell you when the house of the government has been finished, because I was not in this country at that time; but the first has been commenced two years after I went to this country, and I believe it has been finished the same year.

Ques. How long after the change of the government did you leave St. Louis and go to reside in Florissant?

Ans. I went to reside in Florissant about three years and a half or four years after the change. I moved to Florissant in the month August. It would be four years in March following, in the spring after the change.

Ques. Did you ever work to keep up the enclosure of the common-fields of the Grand Prairie?

Ans. Yes, I worked to keep up the enclosure of the common-fields of the Grand Prairie.

Ques. Was every one who had a lot in the Grand Prairie required to work on the enclosure opposite his lot?

Ans. Every inhabitant was required to make the fence of his land, and on a certain height. Each one was making his proportion of enclosure according to the quantity of land he had.

Ques. For whom did you work in front of the lots to keep in repair the enclosure of the common-fields?

Ans. I never worked in front, but I worked on the heights.

Ques. How much of the enclosure did you make or repair on the height, and for whom did you make it?

Ans. When I made the enclosure, I did not measure its length. They were repairing the enclosure as it fell, sometimes a quarter of an arpent, more or less, according to the breach. I repaired enclosures for Philip Bacanne, and Byoux, and Chouteau, and many others whom I do not remember.

Ques. The lot of Condé of which you speak, was it within the enclosure of the common-fields?

Ans. Certainly it was within.

Ques. Do you know who kept in repair the enclosure in front of the lot of Condé?

Ans. His heirs.

Ques. Who were his heirs?

Ans. Mr. Sanguinett was one of them; Patrick Lee another.

Ques. Did Sanguinette or Lee, or any of them, cultivate the lot of Condé's?

Ans. I did not see them cultivating them.

Ques. Did you see others cultivating this lot?

Ans. I never saw anybody working on it.

Ques. The enclosure of the fields of the prairie of Denoyers, was it kept in repair after the enclosure of the fields of the Grand Prairie fell in ruins, or have the fields been relinquished at the same time?

Ans. The enclosure of the fields of the prairie of Denoyers has been kept in repair at least ten years after that of the fields of Grand Prairie fell, and has been relinquished. They still worked in the fields of the prairie of Denoyers five or six years after the change of government.

Ques. The boundaries or limits of the common-fields of which you have spoken, were they in front or on the rear, on a uniform and straight line, or did some lots extend farther on the east and some farther on the west than the others?

Ans. No; they were all of them on a straight line in front and on the rear, and of the same length.

Ques. The stones that marked the limits of the different lots, were they placed from the length to the front, or on the rear?

Ans. There were boundaries (stones) in front and on the rear, placed from distance to distance of three or four arpents between each lot.

Ques. Were there any boundaries in front and on the rear of the lot of Condé?

Ans. I did not follow the line to know whether there were boundaries or not on the lot of Condé.

Ques. Was the front of the lot of Condé cultivated, or what portion was cultivated?

Ans. It appeared to me that the front had been cultivated.

Ques. The swamp or sink-hole "Marais," in the French text of which you have spoken, and by which you recognise Condé's lot, how near the east end was it?

Ans. About an arpent, more or less.

Ques. You say that everybody (in the Grand Prairie,) without exception, told you that it was the lot of Condé, and that it was cultivated by Condé; will you name some one, or all of those who have given you the information?

Ans. Joseph Caloe, Francois Bequette, Louis Dehaitre, Francois Marechal, Charles Sinoneau, Pierre Baribeau, Benito Vasques, and many others.

Ques. Did Louis Chancellier tell you that it was the lot of Condé?

Ans. He may have said it to me; I do not remember; where there are a great many together, we do not remember everything that is said. The spring of Moreau was the "refugium peccatorum" (resort) of everybody.

Ques. Can you name the claims on the north and on the south of the lot of Condé, and say what was the quantity of land in each claim?

Ans. Yes; on the north there is Francois Moreau's claim of one arpent; Charles Limoneau's claim, one arpent; Francois Marechal's claim, one-half of an arpent; Louis Dehairtre's claim, one arpent; Francois Bequette's claim, one arpent; Jaques Marechal's claim, one arpent; Francois Dunegart's claim, one arpent; Joseph Calve's claim, two arpents; Louis Chancellier's claim two arpents; Louis Bigou's claim, one arpent; Rierceari's claim, two arpents; Mainville Descheries, one arpent. On the south there is Jacques Faustin's claim, one arpent; Vaques Benito's claim, one arpent; Louis Baribeau's claim, one arpent; Lacroix's claim, one arpent; Louis Laroche's claim, two arpents; Alexis Marie's claim, two arpents; Jean Louis Provenche's claim, one arpent.

Ques. Have you been examined as witness in the case of Page and Schabel in 1846?

Ans. Yes; I can remember well; they kept me two days.

Ques. *I* your memory as good at present as it was then, or is it better?

Ans. My memory is as good at present as it has ever been—for this reason, that I have so often examined for the last ten or twelve years, that I cannot lose my memory; far from forgetting. They make me remember a great many that I might forget, because I am like a boy going to school. The longer you keep a boy at school, the more he learns, and I am very alike. The more they interrogate me, the more my memory comes to me again. That is the reason why I cannot forget; I go too often to school.

Ques. The lot now described by you as Auguste Condé's lot, is

it the same mentioned by you in the case of Page and Schabel as being the lot of the old Condé?

Ans. It is the same lot.

Ques. The lot at present mentioned by you as being the lot of Jean Louis Provenché, is it the same mentioned in the case of Page and Schabel as being the lot of Provenché?

Ans. It is the same.

Ques. In the case of Page and Schabel, you place the lot of Condé on the south side of the lot of Provenché; at present, you place it on the north side of the lot of Provenché, distant about 8 or 9 arpents; how can you explain that?

Ans. I never said in the suit of Page & Schabel that the lot of Condé was on the south of the lot of Provenché; I remember that suit as well as if it was this day.

Ques. After you first came to this country, have you been absent for some time; and if so, how long?

Ans. Yes, I have been absent from time to time; I have never been absent longer than three months all at once from the village.

Ques. In the case of Page and Schabel, you have said that after having worked two years for Calvé in the Grand Prairie, you went to New Orleans, and remained there two years; now you say that you have never been absent from the village longer than three months altogether; how do you explain that?

Ans. I do not deny that I have said I had been absent for a year, and came back during the second year; one may be sometimes involuntarily mistaken. Thus I say to you: The more one goes to school the more one learns, as you see it; I did remember that trip. If they have said two years, they have been mistaken; I came back during the second year.

Ques. In the case of Page and Schabel, in 1846, you have said that you were seventy-five years old, and had been in this country for fifty-four years; you say at present you are eighty years old, and that you have been in this country sixty-two years.

Ans. If there is any difference, it is the of the interpreter, or of those who have thus written; I have always said that I was eighteen years old when I came to this country.

his
ANTOINE ⋊ SMITH.
mark.

The plaintiffs admitted, for the purposes of the present trial, all the title of Condé or his representatives in the land in dispute had become vested in defendant, and that said claim as separately surveyed covered the same. No further evidence was given *or* either side.

Plaintiffs' Instructions.

The plaintiffs requested the court to give to the jury the following instructions, and each of them:

1. The jury are instructed that the several matters of proofs adduced by the plaintiffs, if genuine, are effectual to show that the title to the land in dispute was vested in the State of Missouri on the 19th day of July, 1820, and that the same title has become vested in the plaintiffs.

2. The jury are further instructed, that the proceedings and proofs before Recorder Hunt, under the act of Congress of 26th May, 1824, read in evidence by the defendant, have no force or effect as against the title of the State of Missouri, acquired in the year 1820.

3. The jury are further instructed, that the survey of the out-boundary read in evidence, is to be considered by them as the official and authorative [authoritative?] survey of the out-boundary directed to be run by the act of Congress of 13th June, 1812, binding on all parties claiming a confirmation by force of the first section of said act; and that all the evidence adduced by the defendant to show that the lot of Condé was situated on the land in controversy, outside of the out-boundary as marked by such survey, ought to be disregarded by the jury.

The court refused to give the said instructions or either of them, and to such refusal the plaintiffs duly excepted. The court on its own motion gave the following instructions:

Instructions given on Court's motion.

By virtue of act of Congress of March 6th, 1820, and the ordinance declaring the assent of the people of the State of Missouri thereto, dated 19th July, 1820, whatever title the United States may have had in the land described in plaintiffs' petition at the time of the passage of that act, if it be the sixteenth section or a fractional part thereof, passed to and vested in the State of Missouri for the use of schools, and by the act of the legislature of this State, approved March 3d, 1851, and the order of the county court read in evidence, if you find that order genuine, the plaintiffs have the right to sue for said land; and if you find that the defendant at the commencement of this suit *the defendant* was in the possession of any portion of said land, you should find for the plaintiffs, unless you believe defendant has shown a better title as hereinafter mentioned.

So far as this case is concerned, the defendant admits that at the commencement of this suit he was in the possession of portion of the premises described in the petition, and the plaintiffs admit that whatever title to the land in the possession of defendant may have been at any time vested in *the* Condé was at the commencement of this suit, and now is vested in the defendant.

The court then, on motion of defendant, gave the following instructions:

Instructions prayed by Defendant.

Instructions prayed by defendant:

1st. If the jury find from the evidence that a tract of land of which the premises in possession of defendant at the commencement of this suit are a part, was cultivated by Condé prior to the 20th day of December, A. D. 1803; that said Condé was, at the time of such cultivation, an inhabitant of the town of St. Louis; that said tract of land was situated in the Grand Prairie, in the neighborhood of said town, and was used by said Condé for the purposes of cultivation, and was one of a series of lots of similar form and character, also used by inhabitants of said town for the purposes of cultivation, and lying adjoining to each other in the same general range of lots, then the plaintiffs are not entitled to recover.

2d. If the jury from the evidence that on the 3d day of March, A. D. 1825, Condé designated the lot of which the premises in possession of the defendant at the commencement of this suit are a part, as being confirmed to him by the act of Congress of 13th of June, 1812, entitled "An act making further provision for settling claims to land in the Territory of Missouri," on the ground of inhabitation, cultivation, or possession, prior to the 20th day of December, 1803, by proving before the recorder of land titles of said Territory the fact of his cultivation and possession thereof, and the boundaries extent of said lot, and that said recorder did thereupon issue a confirmation certificate for said lot to said Condé, and furnish the surveyor general of said Territory with a list of the lots so proved, in which list was that of the said Condé, which lot was afterwards surveyed by said surveyor general, and the survey thereof approved by him on the 18th day of March, 1857, and on the 17th day of July, 1857, returned by him to the office of said recorder, who, on the first day of August, 1857, issued his certificate of confirmation therefor, then the plaintiffs cannot recover in this suit.

To the giving of the aforementioned instructions the plaintiffs duly excepted. The jury found a verdict for defendant.

Motion of Plaintiffs for New Trial.

Within four days the plaintiffs made the following motion for a new trial, to wit:

On the 19th day of October, in the St. Louis circuit court, October term, 1857.

WILLIAM MILBURN and other Commissioners of the 16 section of township 45, Plaintiffs,
vs.
JOHN HOGAN, Defendant.

The plaintiffs move for a new trial:

1st. Because the court admitted incompetent and illegal evidence for the defendant, prejudicial to the plaintiffs.

2. Because the court misdirected the jury in matter of law arising on the trial.

FIELD,
For Plaintiffs.

The court overruled said motion, and the plaintiffs duly excepted.

It is agreed that the public acts referred to in the foregoing bill of exceptions may be read in any appellate court from any printed copy published by authority.

It is further agreed that the amount in controversy in this suit exceeds two thousand dollars.

This bill of exceptions allowed.

J. R. LACKLAND,
Judge.

STATE OF MISSOURI,
County of St Louis, ss.

I, Stephen Rice, clerk of the circuit court within and for the county aforesaid, certify the foregoing to be a true transcript of the record and proceedings in the above entitled cause, as fully as the same now remain on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at office in the city of St. [SEAL.] Louis, this twenty-seventh day of January, A. D. one thousand eight hundred and fifty-eight.

STEPHEN RICE, *Clerk.*

Suggestion of death of Milburn and Motion for Rule to show Cause, &c.

Afterwards, in said supreme court, at the March term, 1858, the attorneys for the plaintiffs in error appeared and suggested the death of William Milburn, one of said commissioners, and moved the court for a rule on said defendant in error to show cause at the next term of the court, if any he have, why the writ of error in this cause should not be prosecuted in the name of the surviving plaintiffs in error. And thereafter, during the term aforesaid, the court granted said rule, and ordered the cause continued until the next term.

Rule.

And afterwards, on the third day of September, in the year aforesaid, there issued from the office of the clerk of said court a rule, in words as follows:

THE STATE OF MISSOURI, *ss.*

The State of Missouri to the Sheriff of St. Louis county, in said State, greeting:

Whereas in the case of William Milburn, William Glasgow,

jr., and William C. Taylor, commissioners of the sixteenth section, township forty-five north, range seven east, plaintiffs in error, against John Hogan, defendant in error, it has been represented to our supreme court of said State, at the March term, in the year 1858, that since the return of the writ of error in said cause into said supreme court, and before an assignment of errors had been filed in said cause, the said William Milburn has departed this life:

These are, therefore, to command you that you summon John Hogan, said defendant in error, to be and appear before our said supreme court on the first day of the next term thereof, to be begun and held at the court-house in the city of St. Louis, on the third Monday in October next, to show cause, if any he have, why the writ of error aforesaid should not be prosecuted in the name of the surviving plaintiffs in error, the said William Glasgow, junior, and the said William C. Taylor; and have you then there this writ, with your return endorsed thereon.

In testimony whereof I hereunto set my hand and the seal of said supreme court at office in St. Louis, this third day of September, A. D. 1858.

WM. S. GLANVILLE, *Clerk.*

Said writ was returned on the 9th day of September, A. D. 1858, with the endorsement of the sheriff thereon, as follows:

Executed this writ in St. Louis county, on the 9th day of September, 1858, by delivering a copy of the same, as furnished by the clerk, to the within named John Hogan.

M. S. CERRE, *Sheriff.*
By GEO. N. STEVENS, *D'y.*

Appearance of Jno. Hogan.

Afterwards, at the October term, 1858, on the 13th day of November, the following appears of record in this cause:

In obedience to a rule on the said John Hogan, granted at the last term of this court, on motion of the said William Glasgow, jr., and the said William C. Taylor, surviving commissioners and plaintiffs in error in this cause, now appears the said defendant in error by his attorney, and consents that this cause be revived and prosecuted in the name of the aforesaid surviving commissioners, the said William Glasgow, junior, and the said William C. Taylor; and the said defendant in error further consents that this cause be continued until the next term of this court. Thereupon, the cause is continued. The said plaintiffs make no appearance.

Assignment of Errors.

Afterwards, at said term, the said plaintiffs in error appear and file an assignment of errors, which is as follows:

And the said surviving plaintiffs in error now come and say that

in the record it appears that the court below committed the following errors:

1. In admitting illegal evidence tendered to the jury by the defendant below.
2. In refusing proper instructions to the jury, proposed on behalf of the plaintiff below.
3. In giving to the jury improper instructions, objected to by plaintiff below.
4. In rendering judgment for the defendant below.
5. In many other particulars appearing in the record.

Wherefore the plaintiffs in error pray that the judgment be reversed, and that they be restored, &c.

By their attorneys, FIELD & BATES.

Joinder in Error.

To which defendant in error, by his attorney, joined in errror, as follows:

Defendant in error says there is no such error in the record of proceedings in this cause as above assigned.

T. POLK,
For Def't in Error.

Argued and submitted.

Afterwards, at the March term, 1859, the parties appeared by their attorneys and argued this cause, and submitted the same to the court for a decision.

Judgment Sup. Court.

Afterwards, at said March term, 1859, on the 27th day of May, 1859, judgment was rendered by said supreme court in this cause, in the following words, to wit:

WILLIAM GLASGOW, JR., and WILLIAM C. TAYLOR, surviving commissioners of the 16th section, township 45 north, range 7 east, Plaintiffs in Error, vs. JOHN HOGAN, Def't in Error.	Error to Saint Louis Circuit Court.

Now, at this day come again the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid by said circuit court rendered, be in all things affirmed, and stand in full force and effect. And it is further considered and adjudged by the court, that said defendant in error recover against said plaintiffs in error his costs and charges herein expended, and have thereof execution.

Opinion Sup. Court.

And at the same time the court gave a written opinion in this cause, as follows, to wit:

This case involves precisely the same question determined in the case of Milburn and others against Hardy, at the present term. The judgment is consequently affirmed, the other judges concurring.

W. B. NAPTON.

Bond on Writ Error to U. S. Sup. Court.

Afterwards, on the 23d June, A. D. 1859, the plaintiffs in error filed a bond herein, which is as follows:

Know all men by these presents, that we, James A. Rogers and R. M. Field, are held and firmly bound unto John Hogan, in the full and just sum of five hundred dollars, to be paid to the said John Hogan, his heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas, at the March term, 1859, of the supreme court of the State of Missouri, in a suit depending in said court between William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, plaintiffs, and John Hogan, defendant, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next: Now, the condition of the above obligation is such, that if the said plaintiffs shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

JAS. A. ROGERS. [SEAL.]
R. M. FIELD. [SEAL.]

Approved by William Scott, presiding judge of the supreme court within and for the State of Missouri, this 23d June, 1859.

WILLIAM SCOTT.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of the State of Missouri, held at St. Louis, certify that the foregoing is a full, true and complete transcript of the record and proceedings of said court in the case of William Glasgow, junior, and William C. Taylor, commissioners of the sixteenth section, of township forty-five north, of range seven east, against John Hogan, as fully as the same now remain of record and on file in my office.

In testimony whereof, I hereto set my hand, and the seal of said court, at office in the city of St. Louis, this 20th day of July, A. D. 1859.

[SEAL.]

WM. S. GLANVILLE, *Clerk.*

Citation.

The United States of America to John Hogan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein William Glasgow, jr., and William C. Taylor, surviving commissioners of 16th section, in township 45 north, of range 7 east, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Scott, presiding judge of the supreme court of the State of Missouri, this 23 day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM SCOTT.

Rec'd this 25th day of October, 1859, a copy of the within, with same effect as if served on me by the marshal of the United States for the district of Missouri.

TRUSTON POLK.

Assignment of Errors.

In the Supreme Court of the United States—Dec'r Term, 1859.

WILLIAM GLASGOW, JR., and WILLIAM C. TAYLOR, surviving Commissioners of township 45, &c., Plaintiffs in Error,
vs.
JOHN HOGAN, Defendant in Error.

And now come said plaintiffs in error, and assign the following errors appearing in the record of the judgment and proceedings below:

1. The court below allowed incompetent and illegal evidence to be given to the jury against the plaintiffs, and notwithstanding their objection to the same.

2. The court below gave to the jurors in the cause instructions variant from the law of the land, and prejudicial to the plaintiffs.

3. The court below refused to give to the jury apt, pertinent, and lawful instructions moved on behalf of the plaintiffs.

4. The court below gave judgment for the defendant, whereas

it manifestly appears from the record that judgment should have been given for the plaintiffs.

5. The judgment of the court below, as the same appears on the record, is inconsistent with and repugnant to the Constitution of the United States, *diverse* acts of Congress and the just rights of the plaintiffs, derived from and under said Constitution and acts of Congress.

Wherefore the plaintiffs pray for a reversal of the judgment below, and that they be restored to their just rights, &c.

By their attorney,

L. G. PICOT.

Filed 9th Dec'r, 1859.

it manifestly appears from the record that judgment should have been given for the plaintiffs.

5. The judgment of the court below, as the same appears on the record, is inconsistent with and repugnant to the Constitution of the United States, *diverse* acts of Congress and the just rights of the plaintiffs, derived from and under said Constitution and acts of Congress.

Wherefore the plaintiffs pray for a reversal of the judgment below, and that they be restored to their just rights, &c.

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L. G. PICOT.

Filed 9th Dec'r, 1859.